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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,795	09/03/2003	Richard J. Sacks	P1425	6963

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CENTRAL COAST PATENT AGENCY
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EXAMINER	
DESAI, ANISH P	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/654,795	SACKS, RICHARD J.	
	Examiner	Art Unit	
	Anish Desai	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 January 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on 01/30/06. These drawings are accepted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

2. Claims 22, 25, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22 depends on claim 1 which is cancelled. For the purpose of the examination, the examiner is interpreting that the claim 22 depends on claim 19. Further, claims 22, 25, and 29, recite "a pocket between two layers for enclosing the shock-absorbing material", it is unclear as to which "two layers" the applicant is referring to because the independent claims 19, 23, and 26 recite " a shock absorbing layer comprising material having shock-absorbing qualities", Thus, it seems that the shock absorbing material is contained within the shock absorbing layer and not between the "two layers". The language of the claims is apparently ambiguous. The scope of the claims becomes unclear because how the pocket can be disposed between a conformal layer and a shock absorbing layer and the pocket encloses the shock absorbing layer at the same time. The layer arrangements do not seem to fall within the scope of the disclosed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiles (US 4,808,469) in view of Bryant et al. (US 5,366,801).

Hiles teaches a light weight energy absorbing and damping device, which is a composite of foamed element and at least one visco-elastic element (Abstract). The invention of Hiles is directed to footwear and insoles. The insole of Hiles comprises foam element having visco-elastic elements and a liner comprising a fabric, leather or other suitable material (Column 5, lines 1-6). As shown in the Figure 2, the liner 4 of the insole will come directly in contact with the animal's flesh as instantly claimed. The examiner is equating the liner 4 of Hiles as the claimed conformal layer comprising fibers as claimed in the present invention. Further Hiles teaches the foam can be open cell foam (Column 3, lines 42-43). Moreover, the composite (insole) of Hiles is air and moisture permeable (Column 3, lines 24-27).

Hiles is silent as to teaching of fibers comprising a phase change material (PCM) and wherein the PCM is chosen to be a material for which the phase change temperature is about 95°F. However, Bryant discloses a fabric coated with a layer of phase change material to regulate the temperature and keep the wearer cool and comfortable (Column 4, lines 9-14, Column 5, lines 25-28). The invention of Bryant is

applicable to shoes and environmental suits (Column 5, lines 25-26). Additionally, Bryant teaches a PCM with the phase change temperature of 36.5°C (95°F) (Column 3, line 61). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fabric of Bryant et al. coated with the PCM with the phase change temperature of 95°F in the invention of Hiles, motivated by the desire to provide comfort to the wearer of the footwear of Hiles.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiles (US 4,808,469) in view of Widdemer (US Patent Application Publication 2002/0035755).

Hiles teaches a light weight energy absorbing and damping device, which is a composite of foamed element and at least one visco-elastic element (Abstract). The invention of Hiles is directed to footwear and insoles. The insole of Hiles comprises foam element having visco-elastic elements and a liner comprising fabric, leather or other suitable material (Column 5, lines 1-6). As shown in the Figure 2, the liner 4 of the insole will come directly in contact with the animal's flesh. The examiner is equating the liner 4 of Hiles as the claimed conformal layer comprising fibers as claimed in the present invention. Further Hiles teaches that the foam can be open cell foam (Column 3, lines 42-43). Moreover, the composite (insole) of Hiles is air and moisture permeable (Column 3, lines 24-27).

Hiles is silent as to teaching of fibers based on rare earth elements, optically responsive to both wavelength of ambient light and energy produced by an animal's body, to interact with the animal in a manner to increase oxygenated blood flow through cell structure of the flesh. However, Widdemer teaches products such as gloves,

shoes, and garments. According to Widdemer, it is known that certain rare earth elements reflect and amplify radiation such as laser beams and other wavelength of light (Paragraph 0002). Further, Widdemer teaches that when in proximity to the human body the rare earth elements interact with the human body such that it creates inner warmth in the human body and concurrently an increased blood flow (Paragraph 0002). The increase in blood flow provides more energy to muscles and generally promotes well-being of an individual (Paragraph 0002). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the rare earth elements of Widdemer in the fabric of Hiles, motivated by the desire to provide comfort and general well being to a wearer of the footwear.

5. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiles (US 4,808,469) in view of Bryant et al. (US 5,366,801), and further in view of Widdemer (US Patent Application Publication 2002/0035755).

Hiles teaches a light weight energy absorbing and damping device, which is a composite of foamed element and at least one visco-elastic element (Abstract). The invention of Hiles is directed to footwear and insoles. The insole of Hiles comprises foam element having visco-elastic elements and a liner comprising a fabric, leather or other suitable material (Column 5, lines 1-6). As shown in the Figure 2, the liner 4 of the insole will come directly in contact with the animal's flesh as instantly claimed. The examiner is equating the liner 4 of Hiles as the claimed conformal layer comprising fibers as claimed in the present invention. Further Hiles teaches that the foam can be

open cell foam (Column 3, lines 42-43). Moreover, the composite (insole) of Hiles is air and moisture permeable (Column 3, lines 24-27).

Hiles is silent as to teaching of fibers comprising phase change material (PCM) and wherein the PCM is chosen to be a material for which the phase change temperature is about 95°F. However, Bryant et al. disclose a fabric coated with a layer of phase change material to regulate the temperature and keep the wearer cool and comfortable (Column 4, lines 9-14, Column 5, lines 25-28). The invention of Bryant is applicable to shoes and environmental suits (Column 5, lines 25-26). Additionally, Bryant et al. teach a PCM with the phase change temperature of 36.5°C (95°F) at (Column 3, line 61). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fabric of Bryant coated with the PCM with the phase change temperature of 95°F in the invention of Hiles, motivated by the desire to provide comfort to a wearer of the footwear.

Hiles is silent as to teaching of fibers based on rare earth elements, optically responsive to both wavelength of ambient light and energy produced by an animal's body, to interact with the animal in a manner to increase oxygenated blood flow through cell structure of the flesh. However, Widdemer teaches products such as gloves, shoes, and garments. According to Widdemer, it is known that certain rare earth elements reflect and amplify radiation such as laser beams and other wavelength of light (Paragraph 0002). Further, Widdemer teaches that when in proximity to the human body the rare earth elements interact with the human body such that it creates inner warmth in the human body and concurrently an increased blood flow (Paragraph 0002).

The increase in blood flow provides more energy to muscles and generally promotes well being of an individual (Paragraph 0002). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the rare earth elements of Widdemer in the fabric of Hiles, motivated by the desire to provide comfort and general well being to a wearer of the footwear.

6. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Bryant et al. (US 5,366,801).

Ricken teaches an anti-stress saddle pad formed of multiple layers of material (see Abstract). The saddle pad contains layers from top to bottom as follows: (a) a sheet of felt, (b) a sheet of visco-elastic polymer, (c) a sheet of open-celled polyurethane foam, and (d) a sheet of felt. The examiner is equating the sheet of felt (d) of Ricken as the claimed conformal layer comprising fibers that is in contact with the animal's flesh as instantly claimed. Further Ricken teaches the visco-elastic polymer and the open cell polyurethane foam absorb shocks and vibrations (Column 1, lines 51-59). With respect to claim 21, although Ricken does not explicitly teach the weight of the shock absorbing visco-elastic or open-cell material to be 7 pound, it is the examiner's position that since the invention of Ricken has the same utility (i.e. a saddle pad) as the applicant, the visco-elastic polymer or the foam of Ricken would necessarily have the weight of 7 pound, in order to successfully practice the instantly claimed invention.

Ricken is silent as to teaching of fibers comprising phase change material (PCM) as claimed in claim 19. However, Bryant discloses a fabric coated with a layer of phase

change material to regulate the temperature and keep the wearer cool and comfortable (Column 4, lines 9-14, Column 5, lines 25-28). Note that Bryant is concerned with obtaining a fabric coated with the phase change material in order to regulate the temperature. The applicant is also concerned with providing a product with sophisticated temperature management (see Specification Page 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the phase change material of Bryant to the felt sheet of Ricken, motivated by the desire to keep the horse cool and comfortable.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Bryant et al. (US 5,366,801) as applied to claim 19 above, and further in view of Woods (US 5,802,823).

The invention of Ricken as modified by Bryant et al. as applied to claim 19 is previously disclosed. Ricken is silent as to teaching of a pocket between two layers for enclosing the shock-absorbing material. However, Woods teaches a shock absorbing panel assembly for saddles. The panel assembly comprises shock absorbing panels and pockets for fitting them in (Column 1 lines 66, Column 2, lines 1-5). Therefore, it would have been obvious to one having ordinary a skilled in the art at the time the invention was made to use a pocket as disclosed in the invention of Woods to enclose the shock absorbing foam of Ricken, motivated by the desire to effectively secure the shock absorbing foam of Ricken.

8. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Widdemer (US Patent Application Publication 2002/0035755).

Ricken teaches an anti-stress saddle pad formed of multiple layers of material (see Abstract). The saddle pad contains layers from top to bottom as follows: (a) a sheet of felt, (b) a sheet of visco-elastic polymer, (c) a sheet of open-celled polyurethane foam, and (d) a sheet of felt. The examiner is equating the sheet of felt (d) of Ricken as the claimed conformal layer comprising fibers that is in contact with the animal's flesh. Further Ricken teaches the visco-elastic polymer and the open cell polyurethane foam absorb shocks and vibrations (Column 1, lines 51-59). With respect to claim 24, although Ricken does not explicitly teach the weight of the shock absorbing visco-elastic or open-cell material to be 7 pound, it is the examiner's position that since the invention of Ricken has the same utility (i.e. a saddle pad) as the applicant, the visco-elastic polymer or the foam of Ricken necessarily has the weight of 7 pound in order to successfully practice the instantly claimed invention.

Ricken is silent as to teaching of fibers based on rare earth elements, however, Widdemer teaches products such as gloves, shoes, and garments. According to Widdemer, it is known that the certain rare earth elements reflect and amplify radiation such as laser beams and other wavelength of light (Paragraph 0002). Further, Widdemer teaches that when in proximity to the human body the rare earth elements interact with the human body such that it creates inner warmth in the human body and concurrently an increased blood flow (Paragraph 0002). The increase in blood flow

provides more energy to muscles and generally promotes well-being of an individual (Paragraph 0002). Note that, Widdemer is concerned with providing a leather fabric with a better temperature stabilization. The applicant is also concerned with providing a product with sophisticated temperature management by absorbing the heat generated by the body of the horse and/or rider (see Specification Page 3). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the rare earth elements of Widdemer in the felt layer of Ricken, motivated by the desire to provide comfort and promote general well being of a horse.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Widdemer (US Patent Application Publication 2002/0035755) as applied to claim 23 above, and further in view of Woods (US 5,802,823).

The invention of Ricken as modified by Widdemer is previously disclosed. Ricken is silent as to teaching of a pocket between two layers for enclosing the shock-absorbing material. However, Woods teaches a shock absorbing panel assembly for saddles. The panel assembly comprises shock absorbing panels and pockets for fitting them in (Column 1 lines 66, Column 2, lines 1-5). Therefore, it would have been obvious to one having ordinary a skilled in the art at the time the invention was made to use a pocket as disclosed in the invention of Woods to enclose the shock absorbing foam of Ricken, motivated by the desire to effectively secure the shock absorbing foam of Ricken.

10. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Bryant et al. (US 5,366,801), and further in view of Widdemer (US Patent Application Publication 2002/0035755).

Ricken teaches an anti-stress saddle pad formed of multiple layers of material (see Abstract). The saddle pad contains layers from top to bottom as follows: (a) a sheet of felt, (b) a sheet of visco-elastic polymer, (c) a sheet of open-celled polyurethane foam, and (d) a sheet of felt. The examiner is equating the sheet of felt (d) of Ricken as the claimed conformal layer comprising fibers that is in contact with the animal's flesh. Further Ricken teaches the visco-elastic polymer and the open cell polyurethane foam absorb shocks and vibrations (Column 1, lines 51-59). With respect to claim 28, although Ricken does not explicitly teach the weight of the shock absorbing visco-elastic or open-cell material to be 7 pound, it is the examiner's position that since the invention of Ricken has the same utility (i.e. a saddle pad) as the applicant, the visco-elastic polymer or the foam of Ricken necessarily has the weight of 7 pound in order to successfully practice the instantly claimed invention.

Ricken is silent as to teaching of fibers comprising phase change material (PCM) as claimed in claim 26. However, Bryant discloses a fabric coated with a layer of phase change material to regulate the temperature and keep the wearer cool and comfortable (Column 4, lines 9-14, Column 5, lines 25-28). Note that Bryant is concerned with obtaining a fabric coated with the phase change material in order to regulate the temperature. The applicant is also concerned with providing a product with sophisticated temperature management (see Specification Page 3). Therefore, it would

have been obvious to one having ordinary skill in the art at the time the invention was made to apply the phase change material of Bryant to the felt sheet of Ricken, motivated by the desire to keep the horse cool and comfortable.

With respect to claim 28, although Ricken does not explicitly teach the weight of the shock absorbing visco-elastic or open-cell material to be 7 pound, it is the examiner's position that since the invention of Ricken has the same utility (i.e. a saddle pad) as the applicant, the visco-elastic polymer or the foam of Ricken necessarily has the weight of 7 pound in order to successfully practice the instantly claimed invention.

Ricken is silent as to teaching of fibers based on rare earth elements, however Widdemer teaches products such as gloves, shoes, and garments. According to Widdemer, it is known that the certain rare earth elements reflect and amplify radiation such as laser beams and other wavelength of light (Paragraph 0002). Further, Widdemer teaches that when in proximity to the human body the rare earth elements interact with the human body such that it creates inner warmth in the human body and concurrently an increased blood flow (Paragraph 0002). The increase in blood flow provides more energy to muscles and generally promotes well-being of an individual (Paragraph 0002). Note that Widdemer is concerned with providing a leather fabric with a better temperature stabilization. The applicant is also concerned with providing a product with sophisticated temperature management by absorbing the heat generated by the body of the horse and/or rider (see Specification Page 3). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made

to use the rare earth elements of Widdemer in the felt layer of Ricken, motivated by the desire to provide comfort and promote general well being of a horse.

11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,974,397) in view of Bryant et al. (US 5,366,801), further in view of Widdemer (US Patent Application Publication 2002/0035755) as applied to claim 26 above, and further in view of Woods (US 5,802,823).

The invention of Ricken as applied to claim 26 is previously disclosed. Ricken is silent as to teaching of a pocket between two layers for enclosing the shock-absorbing material. However, Woods teaches a shock absorbing panel assembly for saddles. The panel assembly comprises shock absorbing panels and pockets for fitting them in (Column 1 lines 66, Column 2, lines 1-5). Therefore, it would have been obvious to one having ordinary a skilled in the art at the time the invention was made to use a pocket as disclosed in the invention of Woods to enclose the shock absorbing foam of Ricken, motivated by the desire to effectively secure the shock absorbing foam of Ricken.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anish Desai whose telephone number is 571-272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hai Vo

HAI VO
PRIMARY EXAMINER